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UNLIMITED JURISDICTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK, ET AL.,

Defendants.

CASE NO. BC422252

[Assigned to the Hon. John Wiley,
Judge, Dept. "50"]

OPPOSITION TO MOTION TO
OPPOSE AN EVIDENCE SANCTION
AGAINST WILLIAM TAYLOR AND FOR
MONETARY SANCTIONS; REQUEST
FOR SANCTIONS AGAINST THE CITY
OF BURBANK AND ITS COUNSEL OF
RECORD, DENNIS A. BARLOW,
CAROL A. HUMISTON, KRISTIN A.
PELLETIER, ROBERT J. TYSON, AND
BURKE, WILLIAMS & SORENSON,
LLP, JOINTLY AND SEVERALLY, IN
THE AMOUNT OF \$5000.00;
DECLARATIONS OF CHRISTOPHER
BRIZZOLARA AND EUGENE RAMIREZ

Date: June 23, 2010

Time: 8:30 a.m.

Dept.: 50

Action Filed: 9/22/09

1 TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD, AND TO THE
2 CITY OF BURBANK:

3 PLEASE TAKE NOTICE that plaintiff William Taylor hereby opposes the Motion for An
4 Order Imposing An Evidence Sanction and for monetary sanctions against plaintiff William Taylor
5 and Christopher Brizzolara.

6 PLEASE TAKE FURTHER NOTICE that plaintiff Williams Taylor requests the Court to
7 impose monetary sanctions in the amount of no less than \$5000.00 against defendant City of
8 Burbank and its counsel of record, Dennis A. Barlow, Carol A. Humiston, Kristin A. Pelletier,
9 Robert J. Tyson, and Burke, Williams & Sorenson, LLP, jointly and severally, for filing and
10 prosecuting the instant unjustified motion, and for failing to engage in a reasonable and good faith
11 attempt to informally resolve each of the issues presented by this motion prior to filing same.
12

13 Dated: 6/9/10

14
15 By: 

16 Gregory W. Smith
17 Christopher Brizzolara
18 Attorneys for Plaintiff
19 WILLIAM TAYLOR
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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

This is a whistleblower retaliation pursuant to *Labor Code* Section 1102.5 and employment retaliation case under the Fair Employment and Housing Act ("FEHA") brought by plaintiff William Taylor ("plaintiff"), the former Burbank Police Department ("BPD") Deputy Chief of Police. Plaintiff has employed as a sworn peace officer with the BPD for over twenty years and progressed steadily through the ranks to the rank of Deputy Chief of Police, the second highest rank in the BPD.

On or about 11/19/07, plaintiff prepared a memorandum which was submitted to then BPD Chief of Police Tim Stehr ("Stehr") requesting that an outside agency be appointed to investigate the burglary of internal affairs files and investigative materials (which burglary upon information and belief was committed by one or more BPD officers) which had been located in the office of BPD Lieutenant Rodriguez. In response, Chief Stehr angrily ordered plaintiff to destroy the memorandum he had prepared, and to delete the conclusion from the investigation conducted by BPD Lt. Rodriguez.

On or about 3/13/09, plaintiff complained to Chief Stehr that a BPD lieutenant was sexually harassing females at the Burbank Animal Shelter. Plaintiff recommended that the lieutenant be placed on administrative leave pending an investigation of the lieutenant's misconduct. Chief Stehr refused to place the lieutenant on leave, and became angry at plaintiff for making the recommendation.

On or about 3/19 and 3/24/09, plaintiff informed Burbank City Manager Michael Flad ("Flad"), the highest ranking administrative official in the City of Burbank, about the magnitude of the sexual harassment conducted by the lieutenant at the Burbank Animal Shelter. In or around April and May 2009, on two separate occasions, plaintiff informed Flad that the lieutenant

1 who had been accused of sexually harassing females at the shelter had inside information
2 regarding Chief Stehr, and as a result thereof Chief Stehr had refused to place the lieutenant on
3 administrative leave. Plaintiff also informed Flad that he believed that the lieutenant had in fact
4 sexually harassed females at the Burbank Animal Shelter.

5 On or about 4/22/09, plaintiff informed Flad that documents concerning an excessive force
6 investigation against the BPD were burglarized from Lieutenant Rodriguez' office, and that Chief
7 Stehr was attempting to cover up the burglary. On or about 4/30/09, plaintiff reiterated many of
8 same concerns to Flad.
9

10 From in or around April 2008 through May 4, 2009, plaintiff, then the Deputy Chief of Police
11 of the Burbank Police Department, complained on at least eight different occasions to Chief Stehr
12 that minority officers in the BPD were being subjected to discrimination, and were being unjustly
13 targeted for termination. On or about 4/15/09, and again on or about 4/18/09, plaintiff reported
14 to Burbank City Councilwoman Marsha Ramos that he believed that minority officers in the BPD
15 were being subjected to discrimination by the BPD by targeting them for unjust termination. On
16 or about 4/22/09, and again on or about 4/30/09, plaintiff reported to Burbank City Manager Flad
17 that he believed there minority officers in the BPD were being subjected to discrimination by the
18 BPD.
19

20 Thereafter, on or about 5/4/09, in retaliation for his protected whistleblowing activities
21 plaintiff pursuant to *Labor Code* Section 1102.5 and protected activities in reporting and protesting
22 discrimination in violation of FEHA against other BPD employees, plaintiff was demoted from the
23 rank of Deputy Chief of Police to the rank of Captain. Further, on or about 1/21/10, plaintiff was
24 placed on involuntary leave by the BPD for specious and unfounded allegations of misconduct.
25

26 On or about 6/15/09, plaintiff filed a complaint for retaliation with the DFEH. On or about
27 8/3/09 filed a governmental claim for retaliation based upon *Labor Code* Section 1102.5 with the
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1 defendant. Subsequently, on or about 3/31/10, plaintiff was served by defendant with a Notice
2 of Intent to Terminate his employment.

3 **II. DEFENDANT'S MOTION LACKS SUBSTANTIAL JUSTIFICATION, AND SHOULD BE**
4 **SUMMARILY DENIED**

5 Plaintiff in the instant action noticed the deposition of former BPD Lt. Jon Murphy for
6 3/26/10. Lt. Murphy was previously the Lieutenant in charge of the Internal Affairs Bureau of the
7 BPD, and is believed to have knowledge of information relevant and discoverable in this case,
8 including the burglary of internal affairs files and investigative materials which had been located
9 in the office of BPD Lieutenant Rodriguez, which plaintiff contends was perpetrated by member(s)
10 of the Burbank Police Department, and the conduct of a BPD lieutenant who was alleged to have
11 sexually harassed females at the Burbank Animal Shelter, and other relevant matters.
12

13 In or around the week commencing 3/22/10, Eugene Ramirez, a partner in the firm of
14 Manning & Marder, Kass, Ellrod, Ramirez, LLP, became aware that the deposition of Lt. Murphy
15 was scheduled to occur on 5/26/10 in this case. Mr. Ramirez and his firm are the counsel of
16 record for Lt. Murphy in a related action entitled *Dahlia v. City of Burbank*. On or about 3/25/10,
17 Mr. Ramirez called Christopher Brizzolara, one of the counsel for plaintiff in this action, to discuss
18 whether it would be necessary for Mr. Ramirez to attend this deposition to represent the interests
19 of Lt. Murphy, since the City of Burbank was refusing to pay Mr. Ramirez to represent Lt. Murphy
20 at his deposition. Mr. Brizzolara indicated to Mr. Ramirez at that time that he did not believe that
21 he would be inquiring into any matters that might adversely impact the interests of Lt. Murphy in
22 regard to other matters, including the *Dahlia v. City of Burbank* case. Mr. Brizzolara also advised
23 Mr. Ramirez that if at any time Lt. Murphy indicated during the deposition that he desired to have
24 Mr. Ramirez present as his counsel, Mr. Brizzolara would call Mr. Ramirez and advise him of
25 same.
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1 Thereafter, on 3/26/10, the deposition of Lt. Murphy commenced. During the deposition
2 Lt. Murphy indicated that he did not desire to answer certain questions pertaining to misconduct
3 by BPD employees that is at issue in this action, including: a) questions regarding the burglary
4 of internal affairs files and investigative materials which had been located in the office of BPD
5 Lieutenant Rodriguez, which plaintiff contends was perpetrated by member(s) of the Burbank
6 Police Department; b) questions regarding the BPD lieutenant who was alleged to have sexually
7 harassed females at the Burbank Animal Shelter, and his knowledge in regard thereto; and c)
8 other questions that might potentially infringe upon the privileges afforded these Burbank Police
9 Department employees pursuant to *Evidence Code* Section 835.7 and other authorities.
10

11 Lt. Murphy indicated that he desired for the Court to issue some guidance, pursuant to a
12 Pitchess motion or other proceeding, prior to deciding whether or not he could answer questions
13 regarding these issues. Thus, it became clear during the deposition that in all likelihood a second
14 session of his deposition would be required once the parties had been able to clarify with the
15 Court through Pitchess and/or other motions to the satisfaction of Lt. Murphy that it was
16 appropriate for him to answer such questions.
17

18 At the deposition, defense counsel began to ask questions of Lt. Murphy which could
19 potentially affect his interests in the *Dahlia* case in which Lt. Murphy is represented by Mr.
20 Ramirez. Defense counsel asked questions intended to attack the credibility of Lt. Murphy by
21 attempting to utilize a deposition transcript of Lt. Murphy from a different action entitled *Rodriguez*
22 *v. City of Burbank*. Notably, Lt. Murphy had been represented at that previous deposition by
23 counsel for the City of Burbank in the action. Thus, defendant City of Burbank attempted to attack
24 the credibility of its own former employee by utilizing a deposition transcript from a deposition
25 where the City of Burbank's own attorneys had represented Lt. Murphy at the deposition.
26

27 After being confronted with such tactics, Lt. Murphy repeatedly indicated to counsel for
28 plaintiff and counsel for defendant City of Burbank that he desired that Mr. Ramirez be notified

1 and requested to be present at the deposition to protect his interests. As a result, counsel for
2 plaintiff took a break from the deposition to contact Mr. Ramirez on his cellular telephone.
3 Counsel for plaintiff advised Mr. Ramirez that Lt. Murphy was requesting that Mr. Ramirez be
4 present to represent his interests at the deposition. Counsel for plaintiff inquired of Mr. Ramirez
5 as to whether he could come to the deposition at that time to do so. Mr. Ramirez advised
6 counsel for plaintiff that he was located in San Bernardino at the time and would not be able to
7 travel to the Woodland Hills, the location where the deposition was occurring, at that time. Mr.
8 Ramirez requested that counsel for plaintiff advise counsel for the City of Burbank that given the
9 request of Lt. Murphy, Mr. Ramirez desired to be present at the deposition, and requested that
10 counsel for plaintiff suspend the deposition, and request that counsel for the City of Burbank
11 reschedule an additional session of the deposition at a date, time, and location convenient for the
12 deponent, Mr. Ramirez, and the parties and counsel in the *Taylor v. City of Burbank* action.
13

14 Since counsel for plaintiff had previously agreed with counsel for Lt. Murphy that he would
15 call him if Lt. Murphy believed that he needed Mr. Ramirez to represent his interests at the
16 deposition, and out of professional courtesy to both Lt. Murphy and Mr. Ramirez, counsel for
17 plaintiff thereupon suspended the deposition. Counsel for plaintiff specifically advised counsel
18 for defendant that Mr. Ramirez, the deponent, and counsel for plaintiff would cooperate in re-
19 scheduling the deposition of Lt. Murphy at a date, time, and location convenient for all concerned,
20 and that she would be free at that session of the deposition of Lt. Murphy to ask whatever
21 questions she desired, and that the deposition was being suspended solely so that Lt. Murphy
22 could have his attorney present at the deposition to protect his interests.
23

24 Since that time, neither counsel for plaintiff nor Mr. Ramirez have been contacted by
25 counsel for defendant regarding the scheduling of another session of the deposition of Lt. Murphy.
26 Counsel for plaintiff, Lt. Murphy, and Mr. Ramirez stand ready, able, and willing to schedule an
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1 additional session of the deposition of Mr. Murphy at a date, time, and location convenient for the
2 deponent, Mr. Ramirez, and the parties and counsel in this action.

3 However, instead of simply cooperating with Lt. Murphy, Mr. Ramirez, and counsel for
4 plaintiff in scheduling another session of the deposition of Lt. Murphy, defendant filed the instant
5 unjustified and unfounded motion. It is abundantly clear that counsel for defendant has no real
6 interest in further questioning Lt. Murphy, and has filed the instant motion simply to harass,
7 burden, and oppress plaintiff and his counsel for no legitimate reason. Further, as set forth below,
8 not only is the instant motion factually unjustified, but it also lacks legal support, and is simply an
9 abuse and misuse of the discovery and discovery law and motion process.
10

11 **III. COUNSEL FOR DEFENDANT DID NOT "CROSS-EXAMINE LT. MURPHY ON THE**
12 **SAME TOPICS THAT COUNSEL FOR PLAINTIFF HAD INQUIRED OF LT. MURPHY"**

13 Defendant inaccurately claims that its counsel "cross-examined Lt. Murphy on the same
14 topics that counsel for plaintiff had inquired of from Lt. Murphy". However, counsel for plaintiff at
15 no time attempted to question Lt. Murphy regarding his deposition testimony from another action,
16 and at no time attempted to attack the credibility of Lt. Murphy in regard thereto. Had counsel for
17 plaintiff intended to do so, counsel for plaintiff, out of professional courtesy, would have advised
18 Mr. Ramirez that he should be present at the deposition to protect the interests of Lt. Murphy.
19 Counsel for plaintiff had no reason to anticipate that the defendant City of Burbank would attempt
20 to attack the credibility its former employer by utilizing a deposition from a different case where
21 Lt. Murphy was in fact represented by counsel for the City of Burbank.
22

23 **IV. COUNSEL FOR PLAINTIFF DID NOT ADVISE OR INSTRUCT LT. MURPHY NOT TO**
24 **ANSWER A SINGLE QUESTION POSED BY COUNSEL FOR DEFENDANT DURING**
25 **THE DEPOSITION**

26 Defendant also inaccurately claims that counsel for plaintiff "advised Lt. Murphy not to
27 answer" questions posed by counsel for defendant. However, at no time did counsel for plaintiff
28 ever advise Lt. Murphy not to answer any question posed by counsel for defendant, and at no time

1 dd Lt. Murphy ever refuse to answer any question posed by counsel for defendant. The only
2 request made by counsel for plaintiff to counsel for defendant was to honor the request of Lt.
3 Murphy that his attorney be present to protect his interests once it became apparent that counsel
4 for defendant was attempting to attack Lt. Murphy, and obtain testimony from Lt. Murphy that
5 could potentially be adverse to Lt. Murphy in the action in which he is represented by Mr. Ramirez.
6 Counsel for plaintiff in fact attempted to secure the presence of Mr. Ramirez at the deposition so
7 that the deposition could proceed with Lt. Murphy being represented thereat by his own counsel.
8 However, as set forth above, Mr. Ramirez was unable to travel to the deposition at that time since
9 he was located in San Bernardino, and would not have been able to arrive at the deposition
10 location in Woodland Hills for several hours. Counsel for plaintiff, out of professional courtesy to
11 Lt. Murphy and Mr. Ramirez, thereafter suspended the deposition, and specifically offered and
12 agreed that the deposition be rescheduled to a date, time, and location convenient for the
13 deponent, Mr. Ramirez, and the parties and counsel in this action
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16 **V. COUNSEL FOR DEFENDANT ALSO INACCURATELY CLAIMS THAT THE ACTION IN**
17 **WHICH LT. MURPHY IS REPRESENTED BY MR. RAMIREZ IS NOT RELATED TO THE**
18 **INSTANT ACTION**

19 In footnote 4 of its motion, defendant claims that the action in which Mr. Ramirez
20 represents Lt. Murphy (*Dahlia v. City of Burbank, et al.*) involves "different claims than those at
21 issue in this case ...". Once again, this statement is inaccurate. The *Dahlia* case involves claims
22 that Lt. Murphy attempted to "intimidate" Dahlia, a former police officer employed by the Burbank
23 Police Department, when Dahlia allegedly attempted to "blow the whistle" on alleged excessive
24 use of force by BPD officers in the investigation of the Portos Bakery robbery. Dahlia had
25 previously expressly denied that any excessive force was utilized by anyone in regard to the
26 investigation of the Portos Bakery robbery. After being terminated by the BPD, Dahlia "changed
27 his tune" and claimed that excessive force had been utilized, but that he was allegedly intimidated
28 by Lt. Murphy and others in regard to coming forward as an alleged witness in regard thereto. As

1 the Court is aware, the investigations by the BPD into the allegations of whether excessive force
2 was utilized in the investigation of the Portos Bakery are some of the central issues in this case,
3 since defendant contends that its adverse employment actions against plaintiff, including his
4 demotion, being placed on involuntary leave, and proposed termination are based upon plaintiff's
5 alleged obstruction of the investigations into those claims of alleged excessive force.

6
7 **VI. COUNSEL FOR DEFENDANT HAS FAILED TO CITE ANY LEGAL AUTHORITY**
8 **ENTITLING DEFENDANT TO EVIDENTIARY AND/OR MONETARY SANCTIONS**

9 Defendant has failed to cite any apposite authority that defendant is entitled to an
10 evidentiary sanction or any other sanction in regard to this matter. Defendant spends a
11 substantial portion of its moving papers citing authority regarding whether or not prior testimony
12 is a proper subject of cross-examination, and discussing the scope of permissible examination
13 at a deposition. However, neither plaintiff nor his counsel have ever indicated that counsel for
14 defendant is not entitled to cross-examine Lt. Murphy on any matter that is relevant to this case.
15 Instead, counsel for plaintiff, at the specific request of Lt. Murphy and his counsel, have simply
16 requested that such examination take place with Lt. Murphy represented by his own counsel to
17 protect his own interests. Counsel for plaintiff has not sought to "obtain any tactical advantage",
18 as falsely claimed by defendant. Whatever the testimony of Lt. Murphy was at his prior deposition
19 is a matter of record, and counsel for plaintiff has not and could not possibly have engaged in any
20 "coaching" of Lt. Murphy in regard thereto.
21

22 Defendant also cites inapposite and irrelevant authority regarding the proper grounds for
23 instructing a witness not to answer a question at deposition. However, counsel for plaintiff never
24 advised or instructed Lt. Murphy not to answer any question at his deposition, and Lt. Murphy
25 did not refuse to answer any question at his deposition.

26 Indeed, quite tellingly, defendant has not sought to compel the deposition of Lt. Murphy,
27 and has not sought to compel him to answer any question thereat, since defendant and its
28

1 counsel are aware that Lt. Murphy did not refuse to appear for his deposition, has in fact agreed
2 to appear with his counsel at his deposition for a second session, and did not refuse to answer
3 any question asked of him by counsel for defendant. Thus, defendant apparently has no real
4 interest in further examining Lt. Murphy, including cross-examining him with his testimony from
5 a deposition where he was represented by attorneys for the City of Burbank.

6
7 **VII. COUNSEL FOR PLAINTIFF HAS SIMPLY REQUESTED THAT COUNSEL FOR**
8 **DEFENDANT HAVE THE PROFESSIONAL COURTESY AND ABIDE BY THE**
9 **PRECEPTS OF FUNDAMENTAL FAIRNESS TO PERMIT LT. MURPHY TO HAVE HIS**
10 **OWN COUNSEL PRESENT TO PROTECT HIS INTERESTS AT THE DEPOSITION**

11 Neither plaintiff or his counsel have violated any discovery or other order of this Court, and
12 have not engaged in any pattern of willful discovery abuse that has caused the unavailability of
13 evidence. In fact, exactly the opposite is true. Plaintiff and his counsel have repeatedly offered
14 to reconvene the deposition of Lt. Murphy with the simple caveat that counsel for Lt. Murphy be
15 present at the deposition. Defendant has utterly failed to set forth any "pattern of willful discovery
16 abuse" in this matter, or that any evidence is not available because of any actions by plaintiff or
17 his counsel. Again, the exact opposite is true. Lt. Murphy is alive and well, and is available to be
18 examined by counsel for defendant on any date, time, and location that is convenient for the
19 deponent, Mr. Ramirez, and the parties and counsel in this action.

20 Indeed, a review of the authority cited by defendant in support of its motion demonstrates
21 why defendant's motion is unfounded. It is well settled that two elements are absolutely
22 prerequisite to imposition of an evidentiary sanction: (1) there must be a failure to comply ... and
23 (2) the failure must be wilful." *Calvert Fire Ins. Co. v. Cropper* (1983) 141 Cal.App.3d 901, 904.
24 First, plaintiff has not failed to comply with any discovery order or discovery request, and has
25 expressly agreed to a second session of the deposition of Lt. Murphy. Second, plaintiff and his
26 counsel have not wilfully failed to comply with any discovery order or discovery request, and have
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1 expressly attempted to cooperate with counsel for defendant in scheduling a second session of
2 the deposition of Lt. Murphy.

3 *Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Saltkin & Berns* (1992) 7 Cal.App.4th
4 27 and *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, the primary authorities relied upon by
5 defendant, were categorically distinguished by the Second District Court of Appeal in *Maldonado*
6 *v. Superior Court* (2002) 94 Cal.App.4th 1390, in which the court stated that:

7
8 "Moreover, sanctions involving issue preclusion are not generally imposed at this point in
9 a discovery dispute. Under the statute governing depositions, where a party wrongfully fails
10 to answer a question or produce a document requested pursuant to Code of Civil
11 Procedure section 2025, and the party seeking discovery has gone to the court for relief,
12 "[i]f the court determines that the answer or production sought is subject to discovery, it
13 shall order that the answer be given or the production be made on the resumption of the
14 deposition." (Code Civ. Proc., § 2025, subd. (o).) ... **It is only where a deponent "fails
15 to obey an order entered under this subdivision" that the statute permits the court
16 to "make those orders that are just against the disobedient party, or against the
17 party with whom the disobedient deponent is affiliated, including the imposition of
18 an issue sanction, an evidence sanction, or a terminating sanction under Section
19 2023."** (§ 2025, subd. (o), 3d par.)

20
21 Some courts have held that the more serious sanctions may be imposed under Code of
22 Civil Procedure section 2023 even where no specific order has been violated, **but those
23 cases have involved repeated and willful refusals to permit discovery or produce
24 documents over a lengthy period of time which resulted in evidence becoming
25 unavailable.** (See, e.g., *Collisson & Kaplan v. Hartunian* (1994) 21 Cal. App. 4th 1611,
26 1618 [26 Cal. Rptr. 2d 786]; *Vallbona v. Springer* (1996) 43 Cal. App. 4th 1525, 1545-1546
27 [51 Cal. Rptr. 2d 311]; *Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns*
28 (1992) 7 Cal. App. 4th 27, 35-36 [9 Cal. Rptr. 2d 396].) There is no evidence in our record
of such egregious conduct." 94 Cal.App.4th at 1398 - 1399. (Emphasis added.)

Here, defendant has not provided a shred of evidence that plaintiff or his counsel have
engaged in any repeated and willful refusals to permit discovery or produce documents over a
lengthy period of time which resulted in evidence becoming unavailable. Indeed, exactly the
opposite is true. Plaintiff and his counsel and the deponent and his counsel have agreed to
reconvene the deposition of Lt. Murphy with the single caveat that Lt. Murphy be extended the
fundamental fairness and professional courtesy of allowing Lt. Murphy to have his own attorney
present to protect his interests at the deposition.

1 **VIII. DEFENSE COUNSEL'S REQUEST FOR MONETARY SANCTIONS IS UNJUSTIFIED**

2 In *Sabado v. Moraga* (1987) 189 Cal.App.3d 1, the court held that it was an abuse of
3 discretion to sanction an attorney for offering advice at a deposition to an unrepresented witness
4 of the witness' possible legal rights. In *Sabado*, the court stated in pertinent part that:

5 "An attorney who, while acting presumably in the best interest of his own client, offers
6 gratuitous information to an unrepresented witness of possible legal rights should not have
7 to fear punishment if the witness chooses to exercise those rights. The best interests of
8 our judicial system are not served by keeping our uninformed citizens in the dark. ...

9 We find that the trial court abused its discretion in imposing sanctions on the ground that
Schuckman's offering of legal information to a deponent he did not represent caused
unnecessary delay." 189 Cal.App.3d at 9 - 10.

10 Here, similarly, plaintiff's counsel should not be sanctioned simply for stating that Lt.
11 Murphy had the right to have his own counsel present at the deposition to protect his interests.
12 Defendant has cited no authority to support that Lt. Murphy was not entitled to have his attorney
13 present at the deposition once defense counsel commenced to ask questions intended to attack
14 Lt. Murphy, and instead, fundamental fairness and due process support that he was entitled to
15 have his attorney present under the circumstances.
16

17 **IX. DEFENDANT AND ITS COUNSEL FAILED TO ENGAGE IN ANY REASONABLE AND**
18 **GOOD FAITH ATTEMPT TO INFORMALLY RESOLVE ANY OF THE ISSUES**
19 **PRESENTED BY THIS MOTION, AND SHOULD BE SANCTIONED FOR SUCH**
20 **MISCONDUCT**

21 As evidenced by defendant's moving papers, defendant and its counsel did not make any
22 reasonable and good faith attempt to resolve any of the issues presented by this motion prior to
23 filing same. Indeed, as evidenced by Exhibit "B" to defendant's motion, the only communication
24 from defendant or its counsel regarding this matter after the deposition and prior to defendant
25 filing its motion was a letter from Kristin Pelletier, counsel for defendant, dated 4/22/10. In this
26 letter, defense counsel stated in pertinent part as follows:

27 "Since you (referring to counsel for plaintiff) refused to allow the deposition to continue so
28 that I could cross-examine Lt. Murphy on the same subjects you questioned him on direct,
I am going to ask the court to preclude plaintiff from using the testimony elicited at that

1 deposition, as well as seek my fee in attending the deposition. If you would like to discuss
2 or are willing to stipulate to this, we may be able to avoid the motion."

3 Thus, the only attempt made by defendant or its counsel to informally resolve the issues
4 presented by this motion was for defendant to demand that plaintiff stipulate to the evidentiary
5 sanction of precluding plaintiff from using the testimony elicited at the deposition and pay defense
6 counsel's fees for attending the motion. Since as set forth above, defendant is not under any
7 circumstance entitled to an order from this Court precluding plaintiff from using the testimony
8 elicited at the deposition, such a demand from defense counsel was patently unreasonable and
9 not supported by any relevant or apposite authority. Further, defense counsel's concurrent
10 demand that plaintiff reimburse her attorneys fee for attending the deposition was also patently
11 unreasonable. Defense counsel would have been required to attend the deposition whether or
12 not the deposition was suspended, did cross-examine plaintiff thereat, and will in all likelihood
13 be required to attend a second session of this deposition once the Court has clarified the issues
14 regarding the Pitchess privileges pertaining to the allegations regarding the BPP officer(s) involved
15 in burglarizing the BPD and engaging in egregious sexual harassment of female employees at the
16 Burbank Animal Shelter. Lt. Murphy is believed to possess specific information and knowledge
17 of the facts, events, and circumstances regarding these matters, which are directly at issue in this
18 litigation, and are some of the matters for which plaintiff contends that he has been retaliated
19 against for "blowing the whistle".
20
21

22 Stripped of all its hyperbole, defendant's motion is revealed for what it really is - an attempt
23 by defendant to launch an unfounded and spurious preemptive strike to attempt to exclude the
24 testimony of Lt. Murphy, its former lieutenant in charge of its Internal Affairs Bureau, from
25 testifying to facts supporting that defendant's employees engaged in burglaries, sexual
26 harassment, and other egregious misconduct regarding which plaintiff "blew the whistle", and
27 which supports his causes of action for retaliation under FEHA and *Labor Code* Section 1102.5.
28

1 Further, defendant and its counsel fails to address in any manner why defendant refused
2 to cooperate with plaintiff and his counsel and Lt. Murphy and his counsel in simply rescheduling
3 the deposition of Lt. Murphy for a date, time, and location convenient for all concerned, instead
4 of filing the instant unfounded and meritless motion. Counsel for plaintiffs offered on multiple
5 occasions to resolve this matter through this simple and expedient method, including repeatedly
6 during the deposition on March 26, 2010, and in multiple letters to defense counsel. (See Exs.
7 "C" to moving papers and Exs. "A" and "B" to this opposition.) Thus, while plaintiff and counsel
8 indisputably attempted to engage in reasonable and good faith efforts to informally resolve this
9 matter, defendant and its counsel indisputably did not do so.

11 Defense counsel's claim that her alleged attempts to meet and confer during the deposition
12 were sufficient under the Discovery Code was considered and rejected by the court in *Townsend*
13 *v. Superior Court* (1998) 61 Cal.App.4th 1431, where the court stated as in pertinent part as
14 follows regarding the appropriate meet and confer process in regard to a motion to compel
15 deposition testimony:

17 "...The Discovery Act requires that, prior to the initiation of a motion to compel, the moving
18 party declare that he or she has made a serious attempt to obtain "an informal resolution
19 of each issue." ... This rule is designed "to encourage the parties to work out their
20 differences informally so as to avoid the necessity for a formal order. . . .". ...This, in turn,
will lessen the burden on the court and reduce the unnecessary expenditure of resources
by litigants through promotion of informal, extrajudicial resolution of discovery disputes. ...

21 It is the collective experience of lawyers and judges that too often the ego and emotions
22 of counsel and client are involved at depositions. ... Like Hotspur on the field of battle,
23 counsel can become blinded by the combative nature of the proceeding and be rendered
incapable of informally resolving a disagreement. It is for this reason that a brief cooling-
off period is sometimes necessary. ...

24 Respondent court determined that real parties' efforts to convince counsel sufficed as
25 attempts at informal resolution. Closer inspection of the record, however, reveals that the
26 exchanges between counsel were plainly only argument and that there was made no effort
27 at informal negotiation. Argument is not the same as informal negotiation. In short, debate
28 over the appropriateness of an objection, interspersed between rounds of further
interrogation, does not, based upon the record before us, constitute an earnest attempt to
resolve impasses in discovery. ...

1 Real parties contend that it would have been futile to meet and confer with Townsend. The
2 Discovery Act makes no exception based upon one's speculation that the prospect of
3 informal resolution may be bleak. Our history is replete with examples of traditional
enemies working out their differences by way of peaceful negotiation and resolution. ...

4 A reasonable and good faith attempt at informal resolution entails something more than
5 bickering with deponent's counsel at a deposition. Rather, the law requires that counsel
6 attempt to talk the matter over, compare their views, consult, and deliberate. This was not
done at the Townsend deposition." 61 Cal.App.4th 1434 - 1439.

7 Similarly, here, defense counsel simply bickering with plaintiff's counsel at the deposition
8 did not constitute a reasonable and good faith attempt at informal resolution of the matters at
9 issue. Defense counsel's subsequent failure to meaningfully respond in any manner to counsel
10 for plaintiff's attempts to resolve these issues simply compounded the problem.

11 C.C.P. § 2016.040 provides in pertinent part as follows:

12 "A meet and confer declaration in support of a motion shall state facts showing a
13 reasonable and good faith attempt at an informal resolution of each issue presented by the
motion."

14 Here, the "meet and confer" declaration of defense counsel fails to state any facts showing
15 why defendant and its counsel did not simply cooperate with plaintiff and his counsel and Lt.
16 Murphy and his counsel in simply rescheduling the deposition of Lt. Murphy to a date, time, and
17 location convenient for all concerned.

18 C.C.P. § 2023.010(h) and (i) provide as follows:

19 Misuses of the discovery process include, but are not limited to, the following:

20 (h) Making or opposing, unsuccessfully and without substantial justification, a motion
21 to compel or to limit discovery.

22 (i) Failing to confer in person, by telephone, or by letter with an opposing party or
23 attorney in a reasonable and good faith attempt to resolve informally any dispute
24 concerning discovery, if the section governing a particular discovery motion requires the
25 filing of a declaration stating facts showing that an attempt at informal resolution has been
made.

26 C.C.P. § 2023.020 provides as follows:

27 "Notwithstanding the outcome of the particular discovery motion, the court shall impose
28 a monetary sanction ordering that any party or attorney who fails to confer as

1 required pay the reasonable expenses, including attorney's fees, incurred by anyone
2 as a result of that conduct. (Emphasis added.)

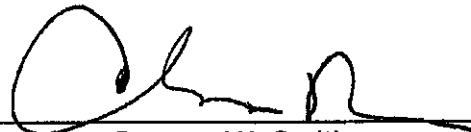
3 Here, defendant has made, without substantial justification, a motion seeking to limit
4 discovery (i.e., the completed deposition of Lt. Murphy), and for evidentiary sanctions to which it
5 is not entitled under any circumstances. Defendant has also failed to make a reasonable and
6 good faith attempt to resolve informally any dispute concerning the discovery at issue, and instead
7 simply made unjustified demands upon plaintiff and his counsel to stipulate to relief to which
8 defendant was not entitled, and failed to respond in any manner to the attempts of plaintiff and
9 his counsel to simply reschedule the deposition of Lt. Murphy on a date, time, and location where
10 his counsel Mr. Ramirez could be present, which would have informally resolved this entire matter
11 with a minimum of inconvenience to all concerned.

12
13 **X. CONCLUSION**

14 The instant motion should be denied in its entirety, and defendant and its counsel, jointly
15 and severally, should be ordered to pay plaintiff at least \$5000.00 in monetary sanctions for
16 having to oppose the instant unjustified motion.

17
18 6/9/10

19 By: _____



20 Gregory W. Smith
21 Christopher Brizzolara
22 Attorneys for Plaintiff
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“DECLARATION”

DECLARATION OF EUGENE RAMIREZ

I, Eugene Ramirez, do declare as follows:

1. I am an attorney at law licensed to practice in the State of California and am a partner in the firm of Manning & Marder, Kass, Ellrod, Ramirez, LLP, counsel of record for former Burbank Police Department Lt. Jon Murphy in the action entitled *Dahlia v. City of Burbank, et al.* This declaration is made in opposition of defendant City of Burbank's motion to sanctions regarding the deposition of former Burbank Police Department Lt. Jon Murphy. Except where otherwise indicated, I have personal knowledge of the following, and if called to testify regarding same I could and would competently testify thereto.

2. In or around the week commencing March 22, 2010, I became aware that the deposition of my client, former Burbank Police Lieutenant Jon Murphy was scheduled to occur on May 26, 2010 in the case of *Taylor v. City of Burbank, et al.*, LASC case No. BC422252. I thereafter called counsel for plaintiff in that action, former Burbank Police Department Deputy Chief William Taylor, the party who had noticed the deposition, to discuss whether it would be necessary for me to attend this deposition to represent the interests of Lt. Murphy. On or about March 25, 2010, I spoke by telephone with Christopher Brizzolara, one of the counsel of record for former Deputy Chief Taylor in the *Taylor v. City of Burbank* action. Mr. Brizzolara indicated to me that he did not believe at that time that he would be inquiring into any matters that might adversely impact the interests of Lt. Murphy in regard to other matters, including the *Dahlia v. City of Burbank* case. Mr. Brizzolara also advised me that if at any time Lt. Murphy indicated during the deposition that he desired to have me present as his counsel, he would call me and advise me of same.

3. On March 26, 2010, I received a call from Mr. Brizzolara on my cellular telephone. He advised me that Lt. Murphy was requesting that I be present to represent his interests at the deposition. He inquired as to whether I could come to the deposition at that time to do so. I

DECLARATION OF EUGENE RAMIREZ

1 advised Mr. Brizzolara that I was located in San Bernardino at the time and would not be able to
2 travel to the Woodland Hills, the location where the deposition was occurring, at that time. I
3 requested that Mr. Brizzolara advise counsel for the City of Burbank that given the request of my
4 client, I desired to be present at the deposition, and requested that he suspend the deposition,
5 and request that counsel for the City of Burbank reschedule an additional session of the
6 deposition at a date, time, and location convenient for the deponent, myself, and the parties and
7 counsel in the *Taylor v. City of Burbank* action.

8
9 4. Since that time, I have not been contacted by counsel for the City of Burbank in the *Taylor*
10 *v. City of Burbank* regarding the scheduling of another session of the deposition of Lt. Murphy.
11 Both my client and myself stand ready, able, and willing to schedule an additional session of the
12 deposition of Mr. Murphy at a date, time, and location convenient for the deponent, myself, and
13 the parties and counsel in the *Taylor v. City of Burbank* action.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16 Executed this JA day of June, 2010, at Los Angeles, California.

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EUGENE RAMIREZ

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DECLARATION OF EUGENE RAMIREZ

“DECLARATION”

DECLARATION OF CHRISTOPHER BRIZZOLARA

I, Christopher Brizzolara, do declare as follows:

1. I am an attorney at law licensed to practice in the State of California and one of the counsel of record for plaintiff herein. This declaration is made in support of plaintiff's opposition to defendant's Motion for An Order Imposing An Evidence Sanction and for Monetary Sanctions.

2. This is a whistleblower retaliation pursuant to *Labor Code* Section 1102.5 and an employment retaliation case under the Fair Employment and Housing Act ("FEHA") brought by plaintiff William Taylor ("plaintiff"), the former Burbank Police Department ("BPD") Deputy Chief of Police. As testified to by plaintiff in this action, plaintiff has been employed as a sworn peace officer with the BPD for over twenty years and progressed steadily through the ranks of the BPD to the rank of Deputy Chief of Police, the second highest rank in the BPD.

3. In this action, plaintiff contends that on or about November 19, 2007, plaintiff prepared a memorandum which was submitted to then BPD Chief of Police Tim Stehr ("Stehr") requesting that an outside agency be appointed to investigate the burglary of internal affairs files and investigative materials which had been located in the office of BPD Lieutenant Rodriguez. Upon information and belief, this burglary was perpetrated by BPD officer(s). Plaintiff contends that in response, Chief Stehr angrily ordered plaintiff to destroy the memorandum he had prepared, and to delete the conclusion from the investigation conducted by Lieutenant Rodriguez.

4. Plaintiff contends that on or about March 13, 2009, plaintiff complained to Chief Stehr that a BPD lieutenant was sexually harassing females at the Burbank Animal Shelter. Plaintiff contends that he recommended that the lieutenant be placed on leave pending an investigation of the lieutenant's misconduct, that Chief Stehr refused to place the lieutenant on leave, and became angry at plaintiff for making the recommendation.

5. Plaintiff contends that on or about March 19 and March 24, 2009, plaintiff informed Burbank City Manager Michael Flad ("Flad"), the highest ranking administrative official in the City

1 of Burbank, about the magnitude of the sexual harassment conducted by the lieutenant at the
2 Burbank Animal Shelter. Plaintiff contends that in or around April and May 2009, on two separate
3 occasions, plaintiff informed Flad that the lieutenant who had been accused of sexually harassing
4 females at the shelter had inside information regarding Chief Stehr, and as a result thereof Chief
5 Stehr had refused to place the lieutenant on administrative leave. Plaintiff contends that he also
6 informed Flad that he believed that the lieutenant had in fact sexually harassed females at the
7 Burbank Animal Shelter.
8

9 6. Plaintiff contends that on or about April 22, 2009, plaintiff informed Flad that documents
10 concerning an excessive force investigation against the BPD were burglarized from Lieutenant
11 Rodriguez' office, and that Chief Stehr was attempting to cover up the burglary. On or about April
12 30, 2009, plaintiff reiterated many of same concerns to Flad.

13 7. Plaintiff contends that from in or around April 2008 through May 4, 2009, plaintiff, then the
14 Deputy Chief of Police of the Burbank Police Department, complained on at least eight different
15 occasions to Chief Stehr that minority officers in the BPD were being subjected to discrimination,
16 and were being unjustly targeted for termination. Plaintiff contends on or about April 15, 2009,
17 and again on or about April 18, 2009, plaintiff reported to Burbank City Councilwoman Marsha
18 Ramos, that he believed that minority officers in the BPD were being subjected to discrimination
19 by the BPD by targeting them for unjust termination. Plaintiff contends that on or about April 22,
20 2009, and again on or about April 30, 2009, plaintiff reported to Burbank City Manager Flad that
21 he believed that minority officers in the BPD were being subjected to discrimination by the BPD.
22

23 8. We contend that thereafter, on or about May 4, 2009, in retaliation for his whistleblowing
24 activities protected pursuant to *Labor Code* Section 1102.5 and protected activities in reporting
25 and protesting discrimination in violation of FEHA against other BPD employees, plaintiff was
26 demoted from the rank of Deputy Chief of Police to the rank of Captain. We further contend that
27 on or about January 21, 2010, plaintiff was placed on involuntary leave by the BPD for specious
28

1 and unfounded allegations of misconduct. We further contend that on or about March 31, 2010,
2 plaintiff was served with a Notice of Intent to Terminate his employment by the BPD based upon
3 specious and unfounded allegations of misconduct.

4 9. On or about June 15, 2009, plaintiff filed a complaint for retaliation with the DFEH. On or
5 about August 3, 2009, plaintiff filed a governmental claim for retaliation based upon *Labor Code*
6 *Section 1102.5* with the defendant.

7
8 10. Lt. Jon Murphy was formerly employed by the Burbank Police Department, and at times
9 pertinent to this action was the lieutenant in charge of the Internal Affairs Bureau of the Burbank
10 Police Department. Upon information and belief, Lt. Murphy has knowledge regarding relevant
11 and discoverable information in this matter in regard to the allegations of misconduct of other
12 Burbank Police Department officers at issue in this action, including the allegations regarding the
13 individual(s) involved in the burglary of the Burbank Police Department and sexual harassment
14 at the Burbank Animal Shelter. The deposition of Lt. Murphy was scheduled in this action for
15 March 26, 2010.

16
17 11. In or around the week commencing March 22, 2010, our offices were contacted by Eugene
18 Ramirez, one of the partners in the firm of Manning & Marder, Kass, Ellrod & Ramirez, who
19 advised that he had become aware that the deposition of his client, Lieutenant Jon Murphy, was
20 scheduled to occur on May 26, 2010 in this case. I have known Mr. Ramirez for several years,
21 and have represented clients adverse to his clients in other employment cases, where his firm
22 represented the defendants in the cases and I represented the plaintiffs. I respect Mr. Ramirez,
23 have had a professional and amicable relationship with him, and both of us have always
24 endeavored to extend each other with professional courtesies in the handling of the cases we
25 have had together.

26
27 12. On or about March 25, 2010, I called and spoke with Mr. Ramirez by telephone, who
28 inquired as whether it would be necessary for him to attend the deposition at issue to represent

1 the interests of Lt. Murphy. Mr. Ramirez advised me that although the City of Burbank was paying
2 for him to defend Lt. Murphy in the related *Dahlia v. City of Burbank* case, the defendant City of
3 Burbank was refusing to pay him to represent Lt. Murphy at his deposition in this case. I
4 indicated to Mr. Ramirez at that time that I did not believe that I would be inquiring into any
5 matters that might adversely impact the interests of Lt. Murphy in regard to other matters,
6 including the *Dahlia v. City of Burbank* case, and that I did not desire for Lt. Murphy, a third party
7 who has no stake in the outcome of this case, to personally incur attorneys fees for paying Mr.
8 Ramirez to attend the deposition. I also advised Mr. Ramirez that if at any time Lt. Murphy
9 indicated during the deposition that he desired to have Mr. Ramirez present as his counsel, I
10 would call Mr. Ramirez and advise him of same.

12 13. During the deposition of Lt. Murphy, I did not inquire during my examination of Lt. Murphy
13 regarding his testimony in the *Rodriguez v. City of Burbank* case, the *Dahlia v. City of Burbank*
14 case, or any other case. I did not attempt to use any of his testimony in those cases either to
15 refresh his recollection, to attempt to impeach him, or for any other purpose.

17 14. During the deposition of Lt. Murphy, it was apparent that he reluctant to testify, and in fact
18 repeatedly stated that he did not want to testify, regarding his personal knowledge in regard to the
19 allegations of misconduct of other Burbank Police Department officers at issue in this action,
20 including the allegations regarding the individual(s) involved in the burglary of the Burbank Police
21 Department and sexual harassment at the Burbank Animal Shelter, until the Court had clarified
22 the issues surrounding such information, and in particular, the application of *Penal Code* Section
23 832.7 and other potential privileges of the officers involved in the misconduct alleged in this
24 action. As such, I deferred requiring him to answer such questions pending the Court clarifying
25 and resolving these issues. Defense counsel repeatedly expressed her accord with this
26 approach, and repeatedly agreed that an additional session of the deposition of Lt. Murphy might
27 be necessary depending upon the Court's resolution of these issues. Thus, it was clearly
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1 contemplated by both myself and defense counsel that a second session of the deposition of Lt.
2 Murphy might be required following the resolution of these issues.

3 15. During the deposition, defense counsel attempted to utilize a deposition transcript of Lt.
4 Murphy from the *Rodriguez v. City of Burbank* case, at which deposition Lt. Murphy had been
5 represented by counsel for the City of Burbank. The clear intent of her use of the deposition was
6 to attempt to attack Lt. Murphy. At that juncture, Lt. Murphy expressed that he desired to have
7 his attorney Mr. Ramirez present for the deposition. I agreed to call Mr. Ramirez to attempt to
8 have him come to the deposition to represent Lt. Murphy.
9

10 16. A break was taken in the deposition while I called Mr. Ramirez on his cellular telephone.
11 I advised him that Lt. Murphy was requesting that he be present to represent his interests at the
12 deposition. I inquired as to whether he could come to the deposition at that time to do so. He
13 advised me that he was located in San Bernardino at the time and would not be able to travel to
14 the Woodland Hills, the location where the deposition was occurring, at that time. He requested
15 me to advise counsel for the City of Burbank that given the request of his client, he desired to be
16 present at the deposition, and requested that I suspend the deposition, and request that counsel
17 for the City of Burbank reschedule an additional session of the deposition at a date, time, and
18 location convenient for the deponent, himself, and the parties and counsel in the action.
19

20 17. I thereafter advised counsel for the City of Burbank that Mr. Ramirez had requested to be
21 present for the remainder of the deposition, had requested that I suspend the deposition, and had
22 requested that counsel for the City of Burbank contact him to reschedule an additional session
23 of the deposition at a date, time, and location convenient for the deponent, himself, and the
24 parties and counsel in this action. I also repeatedly advised counsel for defendant at that time
25 that we would cooperate with defendant in rescheduling the deposition of Lt. Murphy so that she
26 could complete her cross-examination. I also advised her that under the circumstances I believed
27 that Lt. Murphy was entitled to have his own counsel present to protect his interests, and that I
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1 did not believe that it was fair to the witness or to Mr. Ramirez to further proceed under the
2 circumstances. I advised her that I believed that it was only fair under the circumstances to
3 suspend the deposition, and to reschedule a second session of same on a date, time, and
4 location convenient for the deponent, Mr. Ramirez, and the parties and their counsel to this action.

5 18. At no time during the deposition did I ever instruct Lt. Murphy not to answer any question
6 posed by defense counsel. At no time during the deposition did I attempt to "coach" Lt. Murphy
7 as to how he should testify. I did express my opinion that under the circumstances Lt. Murphy
8 was entitled to have his own attorney present at the deposition to protect his interests.
9

10 19. On April 23, 2010, my co-counsel sent a letter via telefacsimile to defense counsel. In this
11 letter, my co-counsel attempted to meet and confer with defense counsel regarding this matter,
12 and repeatedly agreed that he would cooperate in rescheduling the deposition of Lt. Murphy. A
13 true and correct copy of that letter is submitted herewith as Ex. "A".

14 20. On April 26, 2010, I sent a letter via telefacsimile to defense counsel. A true and correct
15 copy of that letter is submitted herewith as Ex. "B". I advised her that her recitation of the events
16 surrounding the deposition of Lt. Murphy in her letter of April 22, 2010 were inaccurate. I
17 reminded her that neither my co-counsel nor myself represent Lt. Murphy in this matter, and that
18 Lt. Murphy was represented in a related matter by Eugene Ramirez, Esq., one of the named
19 partners in the Manning & Marder, et al. firm. I further reminded her that during his deposition
20 Lt. Murphy requested that his attorney Mr. Ramirez be present to represent him during the
21 deposition.
22

23 21. I also reminded her that during the deposition I had spoken via telephone with Mr. Ramirez,
24 and that Mr. Ramirez had advised us that he was in San Bernardino and was not available to
25 journey to the deposition at that time. I also reminded her that Mr. Ramirez had requested that
26 we suspend the deposition until he could be personally present at same, and that he had
27 specifically indicated to us that he would cooperate with her in scheduling a further session of the
28

1 deposition of Lt. Murphy. I advised her that given that it was my opinion that Lt. Murphy had a
2 right to counsel of his choice in these legal proceedings, and out of professional courtesy and
3 cooperation with Lt. Murphy and Mr. Ramirez, we agreed with Mr. Ramirez to suspend the
4 deposition so that he could be present to represent Lt. Murphy thereat.

5 22. I further advised her that there was no need to file any motion to compel regarding this
6 deposition, since it was our understanding and agreement that Lt. Murphy would be appearing
7 for a further session of his deposition when same had been scheduled on a date and time
8 convenient with the deponent, his counsel, as well as the parties to this action.

9 23. I also reminded her that we had discussed during the deposition that we would be filing
10 Pitchess motions to obtain the internal affairs and other records pertaining to the investigations
11 of the incidents where it has been alleged that Burbank Police Department personnel participated
12 in a burglary and other misconduct at the Burbank Police Department facilities, and sexual
13 harassment and other misconduct at the Burbank Animal Shelter. As set forth above, we contend
14 that these incidents are directly relevant to the plaintiff's whistle-blower retaliation and other
15 causes of action in this case. I also reminded her that Lt. Murphy was reluctant to testify
16 regarding his communications regarding these matters with the plaintiff and others, including ex-
17 Chief Tim Stehr, until the Court has ruled upon Pitchess motions seeking the information,
18 documents, and other items pertaining to these incidents. I further advised her that we would not
19 be able to complete the deposition of Lt. Murphy in any event until we have had the Pitchess
20 issues regarding the above matters resolved by the Court.

21 24. I also again encouraged her to contact Mr. Ramirez and our offices to schedule a
22 convenient and logical date for a further session of the deposition of Lt. Murphy taking into
23 account the issues set forth above. I also advised her that I did not believe that her offices have
24 made a reasonable and good faith effort to resolve each of the issues regarding this deposition
25 at this time. I also advised her that we stood ready, able, and willing to do so. I encouraged her
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1 to contact Mr. Ramirez, myself, and my co-counsel so that we could amicably resolve these
2 matters without the need of court intervention. At no time thereafter did defense counsel contact
3 me to further meet and confer regarding this deposition, and instead simply filed the instant
4 unjustified motion.

5 25. Since the conclusion of the deposition, I have not been contacted by counsel for the
6 defendant City of Burbank regarding the scheduling of another session of the deposition of Lt.
7 Murphy. Both my client and myself stand ready, able, and willing to schedule an additional
8 session of the deposition of Mr. Murphy at a date, time, and location convenient for the deponent,
9 his counsel, and the parties and counsel in this action.

10 26. We assert that defendant is not entitled to sanctions of any kind in this matter. Further,
11 defense counsel's request for monetary sanctions is excessive. The defendant would have
12 purchased a copy of the deponent's deposition regardless of whether the deposition was
13 suspended, so the request for \$991.25 is unwarranted. Defense counsel would have spent the
14 same amount of time preparing for and attending the deposition regardless of whether the
15 deposition was suspended. Whatever time defense counsel spent preparing for the deposition
16 can be put to use at the next session of the deposition of Lt. Murphy. Defense counsel made no
17 reasonable and good faith effort to resolve each of the issues presented by this motion, the
18 motion is unjustified as set forth above, and plaintiff and his counsel should not be subjected to
19 monetary sanctions for any time that defense counsel spent preparing or prosecuting the instant
20 motion.

21 27. The actions of defendant and its counsel in filing the instant motion, and in failing to engage
22 in a reasonable and good faith effort to resolve each of the issue presented by this motion, were
23 without substantial justification. I have spent approximately six hours in meeting and conferring
24 with counsel for defendant and in preparing the instant motion and supporting papers, and
25 anticipate that I will spend at least an additional four hours preparing for and attending the hearing

1 of this motion. My standard hourly rate for matters of this nature is at least \$500.00 per hour, as
2 previously determined by multiple state and federal courts. I respectfully request the Court to
3 impose monetary sanctions in the amount of no less than \$5000.00 against defendant City of
4 Burbank and its counsel of record, Dennis A. Barlow, Carol A. Humiston, Kristin A. Pelletier,
5 Robert J. Tyson, and Burke, Williams & Sorenson, LLP, jointly and severally.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct.
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9 Executed this 9th day of June, 2010, at Santa Monica, California.

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12 CHRISTOPHER BRIZZOLARA
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EXHIBIT "A"

LAW OFFICES OF
GREGORY W. SMITH
6300 CANOGA AVENUE, SUITE 1590
WOODLAND HILLS, CALIFORNIA 91367
TELEPHONE (818) 712-4000 • (213) 388-3400
FACSIMILE (818) 712-4004

April 23, 2010

VIA FACSIMILE & U.S. MAIL

Kristin A. Pelletier, Esq.
Burke Williams & Sorenson LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953

Re: **William Taylor v. City of Burbank**
Los Angeles County Superior Court Case No. BC 422 252

Dear Ms. Pelletier:

My apologies for not responding sooner to your letter regarding the rescheduling of Bill Taylor's deposition. As I am sure you know, Capt. Taylor's Skelly hearing occurred this Monday, April 19, 2010. Capt. Taylor has been advised that he has been terminated from the Burbank Police Department and we are awaiting official notice from the Burbank Police Department on the termination. It is my understanding that notice of termination must be provided within 5 days after the Skelly hearing. Accordingly, we believe Capt. Taylor will be officially terminated from the Department on April 26, 2010.

Consequently, after the termination, my client will be filing another DFEH claim and we will seek leave of court to amend his lawsuit to reflect the termination. Since the termination of Capt. Taylor adds a whole new dimension to the current lawsuit, I believe it is prudent to wait until the complaint is amended before continuing any depositions. Therefore, Capt. Taylor will not attend the deposition on the date noticed in your previous letter. If, however, you can give me a reasonable reason why Capt. Taylor's deposition should be commenced before his lawsuit is amended, I will be glad to discuss it with you. I think you can understand, that I don't want to continually bring Capt. Taylor back to multiple depositions, especially given that he has high blood pressure and that the depositions exacerbate his condition.

I will also respond to your letter dated April 22, 2010. I have reviewed your letter, and although I was not present at the deposition, I believe Murphy's deposition was postponed pending a ruling on our pitchess motion. Your letter doesn't clearly state what you desire. I'm not sure whether you are notifying us that you intend to bring a motion to compel or whether you are

Re: William Taylor v. City of Burbank
Kristin A. Pelletier, Esq.
April 23, 2010
Page Two

attempting to set a new date for Murphy's deposition. Would you please clarify your position.

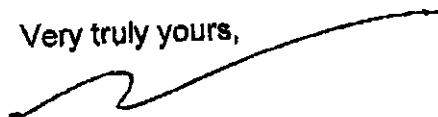
Further, I believe the Court will be hearing the pitches motion in early May, and after the motion is granted and documents are provided, we can once again take Murphy's deposition. If you like, we can set Murphy's deposition in late May. Once again, if you have a reasonable reason why Murphy's deposition should be taken before the pitches motion is ruled upon and documents are provided, I would be glad to discuss those reasons with you. However, I see no urgent reason to take Murphy's deposition before early May.

In your letter you made the statement, "I am going to ask the court to preclude plaintiff from using the testimony elicited at that deposition . . ." I am at a loss to understand what authority you are using that makes you believe a court will actually entertain your request. Issue sanctions and the like are only ordered after a violation of a court order. Your remedy in this case, is to file a motion to compel. However, the deposition was discontinued based upon evidentiary issues unique to police officers. Since we are not precluding you from deposing Murphy in the near future, it is unlikely the court will grant a motion to compel.

In the final portion of your letter you state; "If you would like to discuss or are willing to stipulate to this, we may be able to avoid the motion." I don't understand what you mean when you were requesting that we stipulate to something. Are you asking us to stipulate to precluding Murphy's testimony?

In conclusion, we will be willing to set Capt. Taylor's deposition in June of 2010, so that we can amend the lawsuit, and you have sufficient time to respond to the new allegations. With respect to Murphy, we are willing to reschedule his deposition in late May 2010. Let me know what your thoughts are on these issues. Just a side note, I will be out of the country from May 6, through June 1, 2010.

Very truly yours,



Gregory W. Smith

cc: Christopher Brizzolara, Esq.
Carol A. Humiston, Sr. Asst. City Atty.

04/23/2010 17:01

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LAW OFCS G. W. SMITH

PAGE 01/03

FAX

PAGE 1 of 3

LAW OFFICES OF GREGORY W. SMITH

6300 Canoga Avenue, Suite 1590

Woodland Hills, California 91367

Telephone No: (818) 712-4000 • (213) 385-3400

Facsimile No: (818) 712-4004

TO : Kristin A. Pelletier, Esq.

FROM : Gregory W. Smith, Esq.

RE : William Taylor v. City of Burbank
Los Angeles County Superior Court Case No. BC 422 252

DATE : April 23, 2010

MESSAGE:

ORIGINAL/COPY TO FOLLOW BY MAIL: YES [x] NO []

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SENT TO FAX NUMBER: (213) 236-2700. If you have any problems receiving this FAX, please call us at the above number.

EXHIBIT "B"

Christopher Brizzolara
Attorney At Law

1528 16th Street
Santa Monica, California
90404
Telephone: (310) 394-6447
Telecoyler: (310) 656-7701

April 26, 2010

VIA TELEFACSIMILE

Kristin A. Pelletier, Esq.
Burke, Williams & Sorenson, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953

Re: Taylor v. City of Burbank, et al.

Dear Ms. Pelletier:

I have received your letter of April 22, 2010 as well as my co-counsel's non-exclusive response thereto dated April 23, 2010. Your recitation of the events surrounding the deposition of Lt. Murphy are inaccurate. As you know, neither my co-counsel or myself represent Lt. Murphy in this matter. As you also know, Lt. Murphy is represented in a related matter by Eugene Ramirez, Esq., one of the named partners in the Manning & Marder, et al. firm. As you further know, during his deposition Lt. Murphy requested that his attorney Mr. Ramirez be present to represent him during the deposition.

At the request of Lt. Murphy, we called and spoke via telephone with Mr. Ramirez. Mr. Ramirez advised us that he was in San Bernardino as was not available to journey to the deposition at that time. Mr. Ramirez requested that we suspend the deposition until he could be personally present at same, however, he indicated to us that he would cooperate with you in scheduling a further session of the deposition of Lt. Murphy, at which time you are of course free to resume your questioning of Lt. Murphy. Since this is the United States of America, and individuals have a right to counsel of their choice in legal proceedings, and out of professional courtesy and cooperation with Lt. Murphy and Mr. Ramirez, we agreed with Mr. Ramirez to suspend the deposition so that he could be present to represent Lt. Murphy thereat. As such, there is no need to file any motion to compel regarding this deposition, since it is our understanding that Lt. Murphy will be appearing for a further session of his deposition when same has been scheduled on a date and time convenient with the deponent, his counsel, as well as the parties to this action.

Further, as you know, we also discussed during the deposition that we would be filing Pitchess motions to obtain the internal affairs and other records pertaining to the investigations of the incidents where it has been alleged that Burbank Police Department personnel participated in a burglary and other misconduct at the Burbank Police Department facilities, and sexual harassment and other misconduct at the Burbank Animal

Kristin A. Pelletier, Esq.,
Re: Taylor v. City of Burbank, et al.
April 26, 2010
Page 2

Shelter. As you also know, these incidents are directly relevant to the plaintiff's whistle-blower retaliation and other causes of action in this case. As you will recall, Lt. Murphy was reluctant to testify regarding his communications regarding these matters with the plaintiff and others, including ex-Chief Tim Stehr, until the Court has ruled upon Pitchess motions seeking the information, documents, and other items pertaining to these incidents. Therefore, we will not be able to complete the deposition of Lt. Murphy in any event until we have had the Pitchess issues regarding the above matters resolved by the Court.

In summary, any motion to compel regarding the deposition of Lt. Murphy would be premature and unnecessary at this time, and would lack substantial justification. We encourage you to contact Mr. Ramirez and our offices to schedule a convenient and logical date for a further session of the deposition of Lt. Murphy taking into account the issues set forth above. We do not believe that your offices have made a reasonable and good faith effort to resolve each of the issues regarding this deposition at this time. Nonetheless, as set forth above, we stand ready, able, and willing to do so. We encourage you to contact Mr. Ramirez and ourselves so that we may amicably resolve these matters without the need of court intervention.

Should you have any questions or comments regarding this matter, please do not hesitate to contact us.

Very truly yours,



Christopher Brizzolara

CB/np

cc:

Gregory W. Smith, Esq.
LAW OFFICES OF GREGORY W. SMITH

**CHRISTOPHER
BRIZZOLARA**
Attorney at Law

1528 16th Street
Santa Monica,
California 90404
Telephone: (310)
394-6447
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656-7701

April 26, 2010

FAX TRANSMISSION COVER SHEET

To: Kristin A. Pelletier, Esq.
Gregory W. Smith, Esq.
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Fax#: (213) 236-2700
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Sender: Christopher Brizzolara, Esq.

Our Case#:

Re: *Taylor v. City of Burbank, et al.*

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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 6300 Canoga Avenue, Suite 1590, Woodland Hills, California 91367.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Woodland Hills, addressed as follows:

DATE OF SERVICE : June 9, 2010

DOCUMENT SERVED : OPPOSITION TO MOTION TO OPPOSE AN EVIDENCE SANCTION AGAINST WILLIAM TAYLOR AND FOR MONETARY SANCTIONS; REQUEST FOR SANCTIONS AGAINST THE CITY OF BURBANK AND ITS COUNSEL OF RECORD, DENNIS A. BARLOW, CAROL A. HUMISTON, KRISTIN A. PELLETIER, ROBERT J. TYSON, AND BURKE, WILLIAMS & SORENSON, LLP, JOINTLY AND SEVERALLY, IN THE AMOUNT OF \$5000.00; DECLARATIONS OF CHRISTOPHER BRIZZOLARA AND EUGENE RAMIREZ

PARTIES SERVED : SEE ATTACHED SERVICE LIST.

XXX (BY FEDERAL EXPRESS) I caused the aforesaid document(s) to be delivered to Federal Express either by an authorized courier of Federal Express or by delivery to an authorized Federal Express office in a pre-paid envelope for overnight delivery to the addressee(s) as shown on the Service List.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to Christopher Brizzolara, Esq. at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Woodland Hills, California on June 9, 2010.

Selma I. Francia

SERVICE LIST

WILLIAM TAYLOR v. CITY OF BURBANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252

Christopher Brizzolara, Esq.
1528 16th Street
Santa Monica, California 90404
(By Electronic Mail Only)

Kristin A. Pelletier, Esq.
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Dennis A. Barlow, City Attorney
Carol A. Humiston, Sr. Asst. City Atty.
Office of the City Attorney
City of Burbank
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Post Office Box 6459
Burbank, California 91510

From: Origin ID: JTOA (818) 712-4000
Selma Francia
Law Offices of Gregory W. Smit
6300 Canoga Avenue, #1590

Woodlands Hills, CA 91367



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Dennis A. Barlow, Esq.
Carol A. Humiston, Esq.
Office of the City Attorney
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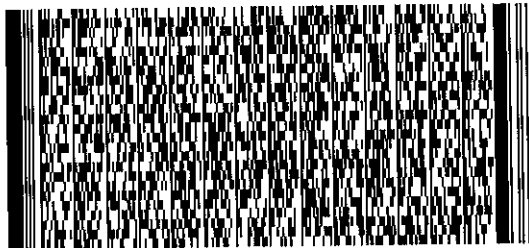


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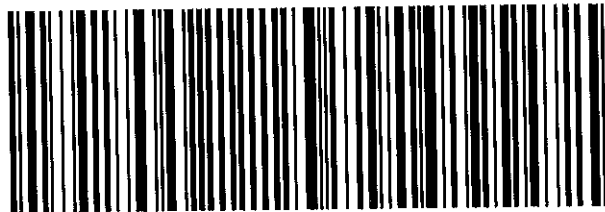


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